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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,627	06/25/2003	Kelly Good	P214379	5070
30662	7590	12/13/2005	EXAMINER	
SCHACHT LAW OFFICE, INC. SUITE 202 2801 MERIDIAN STREET BELLINGHAM, WA 98225-2412			MAI, TRI M	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

rwk

<b>Office Action Summary</b>	<b>Application No.</b> 10/606,627	<b>Applicant(s)</b> GOOD, KELLY	
	<b>Examiner</b> Tri M. Mai	<b>Art Unit</b> 3727	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

### DETAILED ACTION

1. Claims 1-21 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-21 of copending Application No. 10/367,088. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.
2. Claims 1-21 of this application conflict with claims 1-21 of Application No. 10/367088. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.
3. Claims 1, 5, and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cleveland (6491191) in view of Bostelman (5295601). Cleveland teaches a holding system of a dispensing gun with a sidewall 20. Cleveland meets all claimed limitations except for the plug projection. Bostelman teaches that it is known in the art to provide a cap with a plug projection. It would have been obvious to one of ordinary skill in the art to provide a cap with a plug projection in Cleveland as taught by Bostelman to provide a more effective seal.
4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Cleveland rejection, as set forth above in paragraph 3, and further in view of Shelley et al. (5302302). Shelley teaches that it is known in the art to provide a hole 18. It would have been obvious to one of ordinary skill in the art to provide a hole in Cleveland as taught by Shelley to enable one to remove the contents easily.

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5. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cleveland rejection, as set forth above in paragraph 3, and further in view of Wu (5620163). It would have been obvious to one of ordinary skill in the art to provide a supporting structure in Cleveland as taught by Wu to enable one to support the apparatus on a surface.

6. Claims 3-4, 6, 11, 13-15, and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cleveland rejection, as set forth above in paragraph 3, and further in view of Litman (4588116). It would have been obvious to one of ordinary skill in the art to provide guide ribs 30. It would have been obvious to one of ordinary skill in the art to provide guide ribs in Cleveland as taught by Litman to guide the placement of the contents..

7. Claim 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cleveland rejection as set forth in paragraph 6, and further in view of Shelley et al. (5302320). Shelley teaches that it is known in the art to provide a hole 18. It would have been obvious to one of ordinary skill in the art to provide a hole in Cleveland as taught by Shelley to enable one to remove the contents easily.

8. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cleveland rejection as set forth in paragraph 6, and further in view of Wu (4588116). It would have been obvious to one of ordinary skill in the art to provide a supporting structure in Cleveland as taught by Wu to enable one to support the apparatus on a surface.

9. Applicant's arguments filed 08/23/05 along with the declarations of Steve Cupps, Wayne Biehle, and Briam Bochet have been fully considered but they are not persuasive. The arguments presented in these declarations mainly assert that the combination of Cleveland and Bostelman taken along or in combination, disclose teach, or suggest the product as described in

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paragraph 5. As set forth above, Cleveland teaches a holding system of a dispensing gun with a sidewall 20, a barrel portion, a bottom wall 26 forming a cap, and a belt clip. Cleveland meets all claimed limitations except for the plug projection. Bostelman teaches that it is known in the art to provide a cap with a plug projection. It would have been obvious to one of ordinary skill in the art to provide a cap with a plug projection in Cleveland as taught by Bostelman to provide a more effective seal. These declarations fail to ascertain what exactly are missing from the combination Cleveland and Bostelman.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Cleveland and Bostelman are both directed to sealant caulking apparatus. It would have been obvious to one of ordinary skill in the art to provide a cap with a plug projection in Cleveland as taught by Bostelman to provide a more effective seal.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai  
Primary Examiner  
Art Unit 3727

